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Office of the Secretary  
Federal Communications Commission  
Washington, DC 20554

**Re: Comments in the Matter of Preemption of State and Local Zoning and Land Use Restrictions on the Siting, Placement and Construction of Broadcast Station Transmission Facilities  
MM Docket No. 97-182**

Dear Sirs:

Our firm serves as legal counsel to the City of College Park, Georgia. On behalf of that jurisdiction, there are a number of concerns over the proposed regulation of which we would make the Commission aware.

With respect to siting procedures, the proposed preemption rule provides for a decision ranging from twenty-one (21) through forty-five (45) days. Virtually all of the siting decisions which can be anticipated will be made by a local government under an existing zoning ordinance. Virtually all states have a structure within which zoning decisions must be made which frequently requires a fact-finding review by an agency such as a planning commission prior to consideration of and action by the governing authority. Additionally, there are notice procedures, again required by state law, for the exercise of zoning which require public notice ranging from fifteen (15) to forty-five (45) days prior to a public hearing. Notice and opportunity to be heard are essential requirements of due process and protect the applicant as well as the community. Any siting decision procedure which truncates this process and would require a violation of state law standards for consideration of zoning requests, would render local consideration impossible. While staggered time periods, with a shorter time for a less intrusive construction are appropriate, the twenty-one (21) to forty-five (45) day period is inappropriate. Full consideration under zoning requires a minimum of ninety (90) days from time of complete application filing.

With respect to the preemption issues, the jurisdiction we represent is not concerned by preemption by the FCC over environmental or health effects of radio frequency emissions, or with interference effects on existing or potential telecommunications providers and other parties, to the extent that the Commission has made a determination in those areas. Likewise, lighting, painting and

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marking requirements which are required by either the FAA or the FCC are not at issue. However, numerous zoning ordinances have been developed which require screening of the visual effects of towers and other antennae facilities to the maximum extent possible, so long as those regulations do not conflict with regulations of the FAA or FCC. We would ask that that authority be preserved to local governments to the greatest extent possible.

The proposed rule concerns all radio and television broadcast facilities and is unnecessarily broad to reach the objectives which have been adopted by the FCC for rapid deployment of digital television service. The City respectfully requests that any regulation which preempts zoning or land use issues or which adversely affects the ability of the City to regulate through zoning and land use, be confined to broadcast transmission facilities for digital television service.

There should be recognition in the Agency's rules that local governments have legitimate interests in preserving the health, safety and general welfare of their populations, and in regulating the location of structures which can have a deleterious effect upon that community. The case-by-case justification which local governments are required to show under the proposed rule is extreme. We would request that the burden be shifted so that where a broadcast provider cannot come in compliance with local land use or zoning laws, except to the extent those have been preempted, the burden is on the broadcast provider to show why compliance with the regulation is either physically or economically unfeasible.

The City has recently encountered substantial experience with a variety of companies with respect to siting of telecommunications towers. Without exception, those companies have entered into land leases without any regard to city regulation and without checking with the city to find out what the city's process is, or where permissible locations might be available. We have met with those companies on a case-by-case basis, gone through the ordinance and its requirements, and our informal discussions have been a very effective means for resolving open issues. If the companies could be educated to approach the governmental unit first to determine what the nature of the regulations were, virtually all substantial delays in the approval process could be avoided. The companies would then have the knowledge they need to go out and secure appropriate leasehold interests for erection of the towers which would be in compliance with existing ordinances and would not require extraordinary approval such as rezoning.

The standard for location of digital television service facilities should balance the rights of the general public and members of a community in orderly development and protection of residential neighborhoods against the rights of digital television service providers to erection of their facilities. There is no reason why both needs cannot be met. However, placement of all the decision making power within the digital television community would totally gut the abilities of local governments to protect their citizens, residential areas or other areas with severe development impacts.

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All of this assumes that there may be some reason on occasion where a local government may be overridden in the interest of providing digital television service. In that instance, the burden should be upon the propounder of the facility location to establish that an alternative location is not viable and its service cannot be provided through movement of the facility in a manner which would correspond with local ordinances. So long as that override feature were in place, public interest would be preserved and there would be no impediment to siting outside existing ordinances in a case of actual need, as opposed to inclination.

With respect to the Alternative Dispute Resolution Procedure which appears in the proposed rule, the City has no objection to utilizing alternative dispute resolution such as mediation which is consensual in nature. However, the City has encountered a number of bad experiences with arbitration and with decisions which have been made contrary to law and from which no meaningful appeal can be taken. Because of the nature of arbitration, the City never voluntarily goes to that form of alternative dispute resolution, and we would respectfully request that an arbitration decision would be deleted from the proposed rule.

With respect to the other items outlined in your invitation for comments, the community we represent is extremely fragile. It is located along the western border of Hartsfield International Airport and has lost one-third (1/3) of its residential population to airport noise buy out programs. Redevelopment of that area for commercial and industrial use has been extremely slow and there is great concern for the preservation of existing neighborhoods. Specifically, the City has taken a very strong approach toward any adverse use which would encroach upon remaining neighborhoods. While College Park's situation is unique, many local governments have their own unique set of circumstances and peculiarities which require case-by-case regulations tailored to suit those needs. One size does not fit all, and removing all abilities of local governments to regulate land use with respect to broadcast transmission facilities would leave many jurisdictions helpless, particularly in older developed communities in metropolitan areas where the specter of urban blight approaches. The impact of a total preemption would be extremely severe. Our experience with tower siting to date indicates that companies seeking to site towers frequently want the best location for the least money and have little concern as to the effect of their facility on a surrounding community. The two needs can be balanced, but that balance will never be achieved by providing all power to the hands of broadcasters and reserving none to local jurisdictions. We strongly urge that any request in that direction by broadcasters be denied.

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We appreciate the ability to make comments to the proposed rule and would be happy to follow-up with any additional information which the Commission might seek.

Very truly yours,

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cc: J. Scott Miller, City Manager  
Bill Johnston, City Planner  
Don Shannon, City Administrator